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POLITICAL OFFENSES IN EXTRADITION. — Although some noted publicists have contended that nations are bound to extradite criminals by international law,[1] this view has not been taken by English-speaking countries.[2] Under our Constitution,[3] however, every state is obliged to surrender fugitives wanted for any crime by another state in the Union;[4] and most of the leading nations have bound themselves by reciprocal treaties to extradite persons wanted for a large number of specified crimes.[5] No treaties of the United States mention offenses of a political character, unless to exclude them.[6] England has excluded them by a general act of Parliament,[7] and it seems never to have been doubted that the law is the same in the absence of express exclusion.[8]

Although it would seem that there should be definite rules to determine what is a political offense, hardly more than a bare outline has been

[1] The authorities *pro* and *con.* are collected in WHEATON (DANA'S ED.), INTERNATIONAL LAW, § 115. Interesting instances of extradition, mostly of political fugitives, through specific negotiations, may be found in Tilghman, C. J.'s opinion in Commonwealth *v.* Deacon, 10 Serg. & R. (Pa.) 125, 128–130, and OPPENHEIM, INTERNATIONAL LAW, 389 *et seq.*

[2] For a summary of the authorities, see MOORE, EXTRADITION, §§ 16, 28.

[3] U. S. CONST., ART. IV, sec. 2, § 2.

[4] This includes political crimes. See Commonwealth *v.* Dennison, 24 How. (U. S.) 66, 100.

[5] For a list of the treaties of the United States, see 19 CYC. 53, note.

[6] See SPEAR, EXTRADITION, 48. A few treaties of Continental countries provide for extradition for political offenses. See CLARKE, EXTRADITION, 211, note; OPPENHEIM, INTERNATIONAL LAW, 400.

[7] 33 & 34 VICT. c. 52.

[8] A statement to this effect in a message by President Tyler to the Senate has been generally accepted. See MOORE, EXTRADITION, 303 note, 305.

developed. It is universally agreed that acts other than those which are crimes only because they menace the government are political offenses. Thus, extradition has been refused for offenses which, under ordinary circumstances, would be murder,[9] arson,[10] robbery,[11] and piracy.[12] Such crimes are, however, exempt from extradition only if committed in an attempt to get control of the government.[13] The crimes of an anarchist are usually not political, because he seeks to substitute no organized government for that which he attacks.[14] And the murder of a Russian constable by a revolutionist, to effect his escape, was recently held not to be a political crime. *Re Federenko*, 15 West. L. R. 369 (Manitoba, K. B., Oct. 18, 1910). The question of assassination of high government officials has received but little judicial consideration,[15] but jurists are unanimously of the opinion that it should not be given the dignity of a political offense.[16]

The law has justly been more lenient with acts done in an uprising of some size. As it is clear that no violence of any proportion or military disguise can be considered political if really not prompted by political motives, the courts have carefully investigated the *animus* of the expedition as a whole;[17] and a commission from a *de facto* or an assumed government,[18] or its authorization or subsequent ratification of the act,[19] is important only as a matter of evidence. But probably any act done in furtherance of a genuine insurrection, and directly connected with it, is exempt. It is immaterial whether the government which is asked to surrender the fugitive has recognized the fugitives' party as a government [20] or even as belligerents,[21] whether the end sought was a just one,[22] or whether the particular act was helpful in bringing about that end.[23] In theory, however, a murder prompted by ulterior motives would not be

[9] *In re* Castioni, [1891] 1 Q. B. 149; *In re* Ezeta, 62 Fed. 964.

[10] McKenzie's Case, cited 62 Fed. 1000.

[11] Case of the Mexican Revolutionists, cited 62 Fed. 1001; *In re* Young, a Canadian case reported in BENJAMIN, THE ST. ALBANS RAID.

[12] The Roanoke, CLARKE, EXTRADITION, 253.

[13] See *In re* Castioni, *supra*, 156.

[14] *In re* Meunier, [1894] 2 Q. B. 415.

[15] The only case found is that of Jacquin, MOORE, EXTRADITION, 309, in which the Chamber of Indictment at Brussels held it to be a political offense, in accord with the decision of the court of first instance, but against that of two intermediate courts.

[16] See, for example, MOORE, EXTRADITION, § 310 note; CLARKE, EXTRADITION, App. di, diii; 2 STEPHEN, HISTORY OF CRIMINAL LAW, 70; OPPENHEIM, INTERNATIONAL LAW, 398; LAWRENCE, INTERNATIONAL LAW, 238, where it is said, "Rulers should not be preserved like game for *battues* of excited enthusiasts." The treaties of the United States with Belgium and Luxemburg provide for the extradition of such assassins, and such a provision is usual in treaties between the Continental nations. See OPPENHEIM, INTERNATIONAL LAW, 394 *et seq.*

[17] See *In re* Tivnan, 5 B. & S. 645, 681, 696. THE CHESAPEAKE, THE CASE OF DAVID COLLINS *et al.*, 23.

[18] See *In re* Tivnan, *supra;* In Matter of Burley, 1 Local Courts & Municipal Gazette, Toronto 10 (affirmed 1 Can. L. J. N. S. 34); *In re* Young, *supra*. But see The Roanoke, *supra*.

[19] See In Matter of Burley, *supra; In re* Young, *supra*.

[20] Thus the Canadian courts held some acts authorized by the government of the Confederate States political and some not. See THE CHESAPEAKE, *supra;* In Matter of Burley, *supra; In re* Young, *supra*.

[21] In addition to the cases cited in note 20, see Case of McKenzie, *supra*.

[22] See especially Case of McKenzie, MOORE, EXTRADITION, 314, note.

[23] See especially *In re* Castioni, *supra*, 158.

political in its character merely because done in the course of a political rising,[24] any more than would a rape committed by a soldier in time of war. But in dealing with acts of violence directly connected in nature, time, and place with a real rebellion, judges have been reluctant to go into the question of motive, and have regarded it sufficient that it was incidental to the conflict.[25] There has, moreover, been little tendency to consider whether or not the act was a breach of the rules of war.[26] Publicists have suggested that this should be considered and that courts should be free to draw the line between acts abhorrent to common notions of law and morality and those reasonably demanded in warfare.[27] As the problem under discussion is the interpretation of a vague, general phrase in a treaty or statute, this suggestion is open to no legal objection. It is rather astounding to find that in all the cases in English-speaking countries where a fugitive has asserted that his crime had a political character, in only three [28] has the defense failed to prevail. The outcome of the principal case is consequently encouraging.

THE GRANDFATHER CLAUSE AND THE FIFTEENTH AMENDMENT. — The constitutions or statutes of several Southern states require an educational or property qualification for suffrage, but except from that requirement descendants of persons who were entitled to vote in any of the United States prior to some date before the adoption of the Fifteenth Amendment.[1] The words "on account of" in that amendment might logically be so construed as to make motive determine constitutionality. Judged by that standard, these Grandfather clauses would be bad, for they were enacted from a desire to disfranchise as many negroes and as few whites as possible.[2] On the same reasoning, Southern laws disfranchising for pauperism, non-payment of poll-tax,[3] conviction of chicken-stealing,[4] or even illiteracy, would be bad. The inconvenience of having the same statute unconstitutional if enacted at one time and place, and constitutional if enacted at another time and place, and the difficulty of deciding the motive for a law when its makers were actuated by various motives, seem fatal objections to this construction.[5]

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[24] See *In re* Castioni, *supra*, 164, 165.

[25] See *In re* Ezeta, *supra;* BENJAMIN, St. ALBANS RAID, 454, 455.

[26] See *In re* Ezeta, *supra*, 997, 1002; BENJAMIN, ST. ALBANS RAID, 458. But see In Matter of Burley, *supra*.

[27] See LAWRENCE, INTERNATIONAL LAW, 238; OPPENHEIM, INTERNATIONAL LAW, 395 *et seq.*, and Resolutions of the Institute of International Law, 1880 and 1892, WESTLAKE, INTERNATIONAL LAW, 246.

[28] These are *In re* Meunier, *supra* (anarchist); In Matter of Burley, *supra* (seizure of steamer by persons claiming to be Confederate officers); and the principal case. In the case of The Chesapeake, *supra*, the prisoners were discharged for technical reasons, but the offense (similar to that in In Matter of Burley) was not considered political.

[1] LA. CONST (1898), Art. 197, § 5 (son or grandson); N. C. CONST. (amended 1900), Art. VI, § 4 (lineal descendant).

[2] For some pertinent extracts from the debates in the Louisiana constitutional convention, see 13 HARV. L. REV. 279.

[3] See United States *v.* Reese, 92 U. S. 214.

[4] See KY. CONST. § 145; Diamond *v.* Commonwealth, 124 Ky. 418.

[5] See Williams *v.* Mississippi, 170 U. S. 213, 223.